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6           **IN THE UNITED STATES DISTRICT COURT**  
7           **FOR THE DISTRICT OF ARIZONA**

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9           Jhon Nigel Brisken,

10           Plaintiff,

11           v.

12           Unknown Allen,

13           Defendant.

No. CV-18-00241-PHX-JJT (ESW)

**ORDER**

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16           On January 22, 2018, Plaintiff Jhon Nigel Brisken, who is confined in CoreCivic's  
17           Saguaro Correctional Center in Eloy, Arizona, filed a pro se civil rights Complaint pursuant  
18           to 42 U.S.C. § 1983 (Doc. 1), alleging a First Amendment retaliation claim. On April 16,  
19           2018, the Court screened Plaintiff's Complaint pursuant to 28 U.S.C. § 1915A(a) and  
20           ordered Defendant Allen to answer (Doc. 8 at 12). The Court further ordered Plaintiff to  
21           obtain a waiver of service or effectuate service upon Defendant Allen "within 90 days of  
22           the filing of the Complaint or within 60 days of the filing of this Order, whichever is later,"  
23           or the action may be dismissed (*Id.*). On July 11, 2018, service was returned unexecuted  
24           for lack of sufficient information (Doc. 10). The Court provided Plaintiff with an  
25           additional service packet on December 21, 2018 and extended the time to effectuate service  
26           of process for an additional sixty days from the filing of the Order (Doc. 26 at 4). Though  
27           Plaintiff timely returned the service packet to the Clerk of Court, the United States Marshal  
28           Service ("USMS") did not receive the forwarded packet. The Court sent Plaintiff a third

1 service packet on June 14, 2019 (Doc. 30). Plaintiff returned the service packet to the Clerk  
2 of Court on August 26, 2019. Service was returned unexecuted on October 18, 2019 with  
3 the notation: “Per Warden Secretary, subject Allen no longer works for facility.” (Doc. 37  
4 at 1).

5 Under Fed. R. Civ. P. 4(m), “[i]f a defendant is not served within 90 days after the  
6 complaint is filed, the court – on motion or on its own after notice to the plaintiff – must  
7 dismiss the action without prejudice against that defendant or order that service be made  
8 within a specified time.” Defendant Allen has not been served, and the time for doing so  
9 has passed. Where a prisoner fails to provide USMS with accurate and sufficient  
10 information to effect service of the summons and complaint, a court’s sua sponte dismissal  
11 of the unserved defendant is appropriate. *Walker v. Sumner*, 14 F.3d 1415, 1422 (9<sup>th</sup> Cir.  
12 1994) (quoting *Sellers v. United States*, 902 F. 2d 598, 603 (7<sup>th</sup> Cir. 1990)), abrogated on  
13 other grounds by *Sandin v. Connor*, 515 U.S. 472 (1995).

14 **IT IS ORDERED** that Plaintiff either file an affidavit of service or show cause no  
15 later than **December 13, 2019** why his Complaint (Doc. 1) should not be dismissed without  
16 prejudice for failure to timely serve Defendant Allen pursuant to Fed. R. Civ. P. 4(m).

17 Dated this 12th day of November, 2019.



18  
19 Honorable Eileen S. Willett  
20 United States Magistrate Judge  
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